

**ZONING ARTICLES FOR CONSIDERATION AT 2006 TOWN MEETING  
REVISED 3/17/06**

**ARTICLE A: to Allow for Creation of Resident Parking Program for Residents of Commercial/Residential Buildings in the Downtown Overlay District.**

**ORIGINAL ARTICLE**

Will the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

At Section III-G (6) d, insert, at the end of subsection iii, the following language:

“Off-site parking in designated resident parking areas of public parking lots may be permitted if a resident parking permit program or the like is adopted by the Town, and provided that, as a condition of the issuance of the Special Permit, the applicant applies for and presents written evidence to the Board of Appeals and the Building Commissioner of approval by the Town of sufficient resident parking permits to comply with the parking requirements of this Section.

Provision of off-street parking in accordance with the requirements of this Section may be satisfied by any combination of on-site parking and alternative parking options above, provided, however, that where, prior to the application for a Special Permit under this Section, sufficient off-street parking exists or may be reasonably constructed on-site to satisfy the parking requirements of this Section, such parking shall be located on-site and shall not be eligible for relief under this subsection to allow for alternate parking options.”

or act on anything related thereto?

Submitted by the Hingham Planning Board

**ADVISORY COMMITTEE COMMENT:** This proposed amendment relates only to parking requirements for residential units created in existing buildings in the Downtown Hingham Overlay District. This Overlay District was created for the Business A zoning district in Hingham Square in 2004 and its primary intent was to allow for the creation of mixed use commercial/residential buildings in the square. The current provisions of the By-law for the Overlay District allow some or all of the parking spaces required for residential uses created within buildings existing as of 2003 to be accommodated off-site in leased parking areas. The proposed amendment allows this off-site parking to also be accommodated in designated resident parking areas of public parking lots, should the Town, through the Board of Selectmen, enact a resident parking permit program. The enactment of this amendment would further enable the creation of mixed use

commercial/residential buildings in the Square, and the language of the proposed amendment contains adequate safeguards against overburdening the municipal parking areas and public streets with new resident parking.

**RECOMMENDED MOTION:** That the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: At Section III-G (6) d, remove subsection iii in its entirety and replace it with the following language:

“(iii) Parking for all dwelling units (including, without limitation, dwelling units proposed in newly constructed or reconstructed buildings or in newly constructed stories to existing buildings) shall be located on the same parcel or on a contiguous parcel under common ownership.”

Item 2: At Section III-G (6) d, following the revised subsection iii, insert the following new subsection iv:

“(iv) Notwithstanding the foregoing, for dwelling units proposed in existing stories of existing buildings which, as of December 1, 2003, (a) are at least two stories in height and (b) lack required on-site, off-street parking to meet the requirements of this Section, the Board of Appeals may grant a waiver to permit the following:

A. Leased Parking for Commercial/Residential Buildings, provided that a copy of a written, fully executed and effective lease, with a term of at least one (1) year, permitting use of sufficient parking spaces to comply with this Section for a minimum of overnight parking shall be provided to the Board of Appeals prior to the issuance of the Special Permit. For purposes of this Section III-G, “Leased Parking for Commercial/Residential Buildings” shall be the provision of parking for dwelling units in a Commercial/Residential Building on land of a third party located within 500’ of the benefited parcel (but excluding parcels with single-family or two-family dwellings outside of the Overlay District). The granting of this parking waiver shall require a finding by the Board of Appeals that such lease of parking spaces does not create a violation of the zoning of, parking requirements for existing uses on, or any special permit or variance granted to, the burdened parcel. In addition, the applicant (or its successor) shall be required, as a condition of the issuance of a Special Permit, (i) to certify to the Building Commissioner annually, on the anniversary of the date of the issuance of a Special Permit, that such lease remains in full force and in effect and (ii) no later than thirty (30) days prior to the expiration or other termination of such lease, to apply to the Board of Appeals for a modification of its Special Permit which application shall provide for the required parking in another manner consistent with the requirements of this subsection 6(d).

B. Off-site parking in designated resident parking areas of public parking lots, provided that a resident parking permit program or the like is adopted by the Town, and provided that, as a condition of the issuance of the Special Permit, the

applicant applies for and presents written evidence to the Board of Appeals and the Building Commissioner of approval by the Town of sufficient resident parking permits to comply with the parking requirements of this Section.

C. Provision of off-street parking in accordance with the requirements of this Subsection (iv) may be satisfied by any combination of on-site parking and/or alternative parking options described herein, provided, however, that where, prior to the application for a Special Permit under this Section, sufficient off-street parking exists or may be reasonably constructed on-site to satisfy the parking requirements of this Section, such parking shall be located on-site and shall not be eligible for relief under this subsection to allow for alternate parking options

Item 3: At Section III-G (6) d, renumber the final three subsections that are currently numbered iv, v, and iv (sic), to be v, vi and vii respectively.

## **ARTICLE B: TO REZONE PARCEL 144 FROM OFFICIAL AND OPEN SPACE TO RESIDENCE A**

### **ORIGINAL ARTICLE**

Will the Town (1) authorize the Board of Selectmen to sell, lease or otherwise transfer that parcel of land which was formerly shown as Key 144 on Assessors' Map 60 and is now included in Key 143 on Assessors' Map 60 for purpose of redevelopment of a barn; and (2) amend the Zoning By-law of the Town of Hingham, adopted March 10, 1941 as heretofore amended and the Zoning Map of the Town of Hingham thereunder by removing from Official and Open Space and including in Residence District A the land which was formerly shown as Key 144 on Assessors' Map 60 and is now included in Key 143 on Assessors' Map 60; or act on anything relating thereto?

**ADVISORY COMMITTEE COMMENT:** The Hersey House and associated property, which also includes a large separate barn and which is identified as Key 143 and Key 144 on Assessor's Map 60, were given to the Town by Ira Hersey in 1946 and accepted at the Annual Town Meeting in 1948. The total combined area of the two parcels is approximately 4.143 acres.

Article 40 at the 1997 Town Meeting, authorized the Selectmen to sell, lease, or otherwise dispose of the property and house so that the proceeds could be used to offset the cost of the new Town Hall. In **199X** the Selectmen issued an RFP for the sale of the property, but the smaller parcel (0.82± acres or approximately 35,566 SF), formerly Key 144 on Assessor's Map 60, was not included in the RFP and in the Bids received in response to the RFP. Subsequent to the receipt of bids in response to the RFP, the sale of the property has been delayed by litigation.

The smaller parcel is land locked, and it is currently zoned Official and Open Space, along with the remainder of the Hersey House property. Citizens of the Town have expressed an interest in saving the barn through relocation from its existing site on the main Hersey House parcel and ultimate restoration or reconstruction. It is possible that if

the smaller parcel were sold and were subsequently re-zoned to the Residence A district, that the existing barn could be relocated to this parcel; conversely, neither the barn nor any other structure could be located on this parcel if it were to remain in the Official and Open Space district, due to the setback requirements associated with this district. The intention of the Board of Selectmen is that this parcel either become the home for the relocated and restored Hersey House barn, or remain undeveloped open space.

This article would authorize the Selectmen to dispose of the land locked parcel of land (Key 144) via an RFP process. The article would also require the re-zoning of the parcel from Official and Open Space to Residence A District, the same as the zoning of the privately owned property that abuts the parcel on three contiguous sides. The new owner of the parcel could use the land for the installation of the relocated Hersey House barn, including all required utilities, subject to the Town's applicable regulations and restrictions, or the new owner could keep the land in an undeveloped state. Passage of this article is also likely to help to end the litigation that has delayed the sale and redevelopment of the main Hersey House property.

**ADVISORY COMMITTEE RECOMMENDED MOTION:** That the Town (1) authorize the Board of Selectmen, for the minimum consideration of \$1.00, to sell, lease or otherwise transfer that parcel of land which was formerly shown as Key 144 on Assessors' Map 60 and is now included in Key 143 on Assessors' Map 60 solely; and (2) amend the Zoning By-law of the Town of Hingham, adopted March 10, 1941 as heretofore amended, and the Zoning Map of the Town of Hingham thereunder, by removing from Official and Open Space and including in Residence District A the parcel of land of approximately 35,566 SF which was formerly shown as Key 144 on Assessors' Map 60 and is now included in Key 143 on Assessors' Map 60, for use for either (a) undeveloped open space, or (b) as a site for the relocation, restoration and/or reconstruction of the existing Hersey House barn, including all required utilities, subject to the applicable regulations and restrictions of the Zoning By-law for the Residence A District and to other applicable Town regulations, said limitations of use to be incorporated into a deed restriction, historic preservation easements related to both the barn and the historic view corridor, and/or such other legal instrument(s) that will assure the longest possible continuation of these limitations.

## **ARTICLE C: TO MODIFY THE PROCESS FOR GRANTING SPECIAL PERMITS A2**

### **Original Article**

**(Advisory Committee comment and recommended motion will be in the Supplemental Warrant)**

Will the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: Amend Section I-C by deleting the words "Board of Appeals" each time they appear and substituting therefor the words "Permit Granting Authority".

Item 2: Amend Section I-D by:

- (a) deleting subsection 2.b. in its entirety and substituting therefor the following:

“Special Permit A1 - To hear and decide an application for a Special Permit A1 as provided in this By-Law, only for uses in specified districts which are in harmony with the general purposes and intent of this By-Law and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.”;

- (b) in subsection 3 inserting the phrase “A1” after the words “Special Permit” in the first sentence thereof;
- (c) in subsection 3 deleting the second paragraph thereof in its entirety; and
- (d) deleting subsection 4 thereof in its entirety.

Item 3: Delete Section I-F in its entirety and substituting therefor the following:

**“I-F Special Permits**

1. Special Permit Granting Authority  
Effective as of April \_\_, 2006, the Board of Appeals shall be the Special Permit Granting Authority for any use requiring a Special Permit A1 under this By-Law and the Planning Board shall be the Special Permit Granting Authority for any use requiring a Special Permit A2 under this By-Law, including all modifications of any Special Permit A2 issued prior to such effective date. Two associate members of the Planning Board may be appointed by the Board of Selectmen to act on Special Permit A2 applications if necessary. No member of the Planning Board shall act on any matter in which the member may have a personal or financial interest, and in such event, an associate member shall be designated to serve on the Planning Board and to act upon the matter.
2. Procedures for Application, Hearing and Decision  
Each application for a Special Permit shall be filed with the Town Clerk, with duplicate copies submitted in accordance with the regulations of the Special Permit Granting Authority. The Special Permit Granting Authority shall hold a public hearing on the application, as provided in Massachusetts General Laws Chapter 40A, within 65 days of the filing of a complete application and shall render a decision within ninety (90) days from the close of the public hearing. Failure to take action within the said ninety (90) day period shall be deemed to be a grant of the permit applied for.

The Special Permit Granting Authority may grant, grant with conditions, deny, or grant leave to withdraw an application for a Special Permit. A copy of the decision shall be filed with the Town Clerk and the Planning Board (if granted by the Board of Appeals), and shall be furnished the applicant and property owner, in accordance with Massachusetts General Laws Chapter 40A.

The applicant shall be responsible for filing a certified copy of the decision in the Registry of Deeds or, where applicable, in the Land Court. Prior to the issuance of a Building Permit, the applicant shall present to the Building Commissioner evidence of such recording.

3. Review Criteria

In reviewing each such application the Special Permit Granting Authority shall study the site plan with reference to the health, safety and welfare of the prospective occupants, the occupants of neighboring properties, and users of the adjoining streets or highways, and the welfare of the Town generally, including its amenities.

The Special Permit Granting Authority shall limit the proposed development so that its impact on each of the municipal services, ways, utilities and other resources does not exceed its existing design capacity, as determined by the Special Permit Granting Authority. This limitation shall be imposed upon the proposed development regardless of the intensity of development otherwise permitted by Section III-A and Section IV-A.

4. Costs

The costs of professional consultants, experts or assistance incurred by the Board of Appeals or Planning Board shall be borne by the applicant. However, the costs to be paid by the applicant shall not exceed the reasonable and usual charges of said consultants or other experts for such services nor shall they exceed the greater of \$10,000 or one percent (1%) of the total projected cost of the project (inclusive of engineering, architectural, and legal fees and other soft costs). The applicant shall deposit with his application an appropriate portion of the anticipated review costs as determined by the Boards' administrators as security for payment on such costs. No occupancy permit may be issued in accordance with Section I-C of this By-Law until the applicant has paid or reimbursed the Town for all such costs.

5. Approval Criteria

An applicant is not entitled to a Special Permit. The Special Permit Granting Authority may approve such application for a Special Permit if it finds that, in its judgment:

- a. use of the site is in harmony with the general purpose and intent of this By-Law;
- b. the proposed use complies with the purposes and standards of the relevant specific sections of this By-Law;
- c. the specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area;
- d. the use as developed and operated will create positive impacts or potential adverse impacts will be mitigated;
- e. there will be no nuisance or serious hazard to vehicles or pedestrians;
- f. adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use; and
- g. the proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction.

6. A Special Permit shall lapse within a two (2) year period or a shorter period if so specified by the Special Permit Granting Authority, which shall not include any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17, and if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within the period except for good cause.

7. Repetitive Petitions

No Special Permit A2 application which has been unfavorably and finally acted upon by the Planning Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless all but one of the members of the Planning Board, after notice is given to parties in interest of the time and place of the proceedings to consider consent, finds specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records.”

Item 4: Delete Section I-G in its entirety and replace therefor the following:

**“I-G Special Permits with Site Plan Review (A2)**

Site plan review is required for all Special Permits designated A2 in this By-Law. Such site plan review is conducted by the Planning Board as the Special Permit Granting Authority. Each application to the Planning Board for a Special Permit A2 must include all the information and plans required for site plan review. (See Section I-I,

3.) The Planning Board shall transmit forthwith a copy of the application to and may consult with other Town agencies, boards and officials as it deems appropriate. The Planning Board shall review and investigate each such application in accordance with the criteria and standards for site plan review listed in Section I-I”

Item 5: Amend Section I-I by:

- (a) deleting subsection 2 in its entirety and renumbering the subsequent subsections accordingly; and
- (b) amending renumbered subsection 3 (Review Standards) by deleting the words “and Zoning Board of Appeals” in the first sentence thereof.

Item 6: Delete Section I-J in its entirety and substitute therefor the following:

**“I-J Fees**

At the time of filing an Appeal or an application for a Variance or a Special Permit, the applicant shall pay a fee to the Town Clerk, according to the following schedule:

- a. single-family residential Variance or Appeal \$200.00;
- b. application for sign under Section V-B \$100.00; and
- c. all other applications \$300.00.

Agencies of the Town are exempt from all filing fee requirements.”

Item 7: Amend Section III of the By-Law by:

- (a) amending Section III-A under “A2” to delete the words “by the Board of Appeals as provided in Section I-G” and substituting therefor the words “by the Planning Board as provided in Sections I-F and I-G” and by deleting the words “the Board of Appeals in the last sentence thereof and substituting therefor the words “a Special Permit Granting Authority”;
- (b) amending Section III-E by deleting the words “Board of Appeals” and “Board” wherever they appear and substituting therefor the words “Special Permit Granting Authority”;
- (c) amending Section III-G, 5 by deleting the words “Planning Board and/or the Board of Appeals” wherever they appear and substituting therefor the words “Special Permit Granting Authority”;
- (d) amending Section III-G, 6 by deleting the words “Board of Appeals” wherever they appear and substituting therefor the words “Planning Board”; and
- (e) amending Section III-I, 1(b) by deleting the words “Board of Appeals” and substituting therefor the words “Planning Board”.



Item 8: Amend Section IV of the By-Law by:

- (a) in Section IV-B, 10.e. delete the words “the Board of Appeals” wherever they appear and substitute therefor the words “the Permit Granting Authority”;
- (b) in Section IV-D delete the phrase “A3” wherever it appears and substitute therefore the phrase “A2”;
- (c) in Section IV-E delete the words “Board of Appeals” wherever they appear and substitute therefor the words “Planning Board”;
- (d) in Section IV-F delete the words “Board of Appeals” and “Board” wherever they appear and substitute therefor the words “Planning Board”; and
- (e) in Section IV-G, make the following changes:
  - i. in subsection 1, change the words “Special Permit” to “Special Permit A2” and the words “Board of Appeals” to “Planning Board”.
  - ii. in subsection 2, change the words “Board of Appeals” to “Planning Board”, change the words “Special Permit” to “Special Permit A2”, and delete paragraph “a” and re-designate the current paragraph “b” as “a”.
  - iii. in subsection 3, paragraph 2, delete the words “both” and “and the Board of Appeals”.
  - iv. delete the words “the Board” wherever they appear and substitute therefor the words “ the Planning Board”;
  - v. in subsection 5, delete the provisions of paragraph “e” in their entirety, and replace the words “Intentionally Omitted” therefor.
  - vi. in subsection 5.f, delete the words “upon receipt of the report of the Planning Board, but, in any case,”.
  - vii. in subsection 12.b, delete the words “, the Planning Board and the Board of Appeals” and substitute therefor the words “and the Planning Board”.

Item 9: Amend Section V of the By-Law by:

- (a) in Section V-A deleting the words “Zoning Board of Appeals” wherever they appear and substituting therefor the words “Planning Board”;
- (b) in Section V-C deleting the words “Board of Appeals” and “Board” wherever they appear and substituting therefor the words “Planning Board” and amending the name of subsection 2 thereof from “Application and Reference to Planning Board” to “Application”;

- (c) in Section V-E deleting the words “Board of Appeals” and “Board” wherever they appear and substituting therefor the words “Planning Board”;
- (d) in Section V-F deleting subsection “h” in its entirety and relettering subsection (i) to (h) accordingly;
- (e) in Section V-G, 4.g. deleting the words “Zoning Board of Appeals” and substituting therefor the words “Planning Board”; and
- (f) in the second paragraph of Section V-G, 4, j., deleting the phrase “or Board of Appeals”.

Item 10: Amend Section VI by:

- (a) in the definitions of “Nonconforming Structure” and “Nonconforming Use” substitute the words “Permit Granting Authority” for “Board of Appeals”;
- (b) inserting the following definition after the definition of the term “Nonconforming Use”: “Permit Granting Authority – the Board of Appeals under Section I-D or the Planning Board under Section I-F, as designated in this By-Law”; and
- (c) inserting the following definition after the definition of the term “Slope”:  
“Special Permit Granting Authority – the Board of Appeals or the Planning Board as designated in Section I-F, 1 of this By-Law.”

Item 11: If Warrant Article \_\_\_\_ (Parking for Commercial/Residential Buildings) is adopted by Town Meeting, change “Board of Appeals” to “Planning Board”.

or act on any matter related thereto?